IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

WA.No. 701 of 2006(A)

AGAINST THE JUDGEMENT IN WPC.15965/2005 Dated 15/02/2006
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APPELLANTS: PETITIONER:
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1. R. ACHUTHAN NAIR, S/O. GOVINDA PILLAI
   AGED 75, T.C.9/758, SREE NILAYAM,
   SASTHAMANGALAM, TRIVANRUM.

2. S. LALITHAVATHY AMMA,
   W/O. R. ACHUTHAN NAIR, AGED 71, T.C.9/758,
   SREE NILAYAM, SASTHAMANGALAM, TRIVANRUM.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
   ITS SECRETARY (FINANCE), GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE DEPUTY TAHASILDAR,
   (REVENUE RECOVERY), KERALA FINANCIAL CORPORATION
   TRIVANDRUM-695 033.

3. KERALA FINANCIAL CORPORATION,
   VELLAYAMBALAM, TRIVANDRUM.

4. M/S. OUR COMPUTERS, REPRESENTED BY
   ITS PROPRIETOR B. REGHU, CHANIYIL HOUSE,
   KULASEKHARAMANGALAM, VAIKOM.

5. C.K. GOPINATH, CHILLEYATH HOUSE,
   EDAVILANG P.O., KODUNGALLOOR-680 671.

6. K.S. UNNIKRISHNAN, KARIMPARAMBIL,
   PERAMBRA P.O., KODAKARA, THRISSUR-680 689.

R2 & R3 BY ADV. SRI.L.MOHANAN, SC KFC
SMT.VANAJA MADHAVAN
R1 BY GOVT.PLEADER SRI M.R.SABU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08/11/2006, THE COURT ON 16/11/2006 DELIVERED THE FOLLOWING:

V.K.BALI, C.J. & P.R.RAMAN, J.

W.A.NO.701 OF 2006

Dated this the 16th day of November, 2006

JUDGMENT

Raman,J.

This appeal is directed against the judgment dated 15/2/2006 of the learned Single in W.P.(C).No.15965/2005. The writ petition was filed seeking to quash Exts.P17 to P20 and P24 and for other reliefs. Appellants are husband and wife. According to the appellants, the 4th respondent, who is their son-in-law, approached them to stand as surety for a loan transaction with the 3rd respondent and accordingly they stood sureties for the loan transaction. The loan was sanctioned and default committed. According to them, the 4th respondent has played fraud on the appellants. However, we are not going into the question regarding the allegations made by the

appellants against the 4th respondent, as it is irrelevant, since admittedly the appellants are sureties for a loan transaction between the 4th respondent and the Kerala Financial Corporation. The challenge made in the writ petition was against the proceedings initiated against the appellants for recovery of the balance amount due and payable to the Kerala Financial Corporation based on the loan transaction. The appellants approached this Court earlier by filing O.P.No.3033/2003 challenging the recovery proceedings against them. In the judgment dated 14th December, 2004 rendered in the said original petition, it was held that it is open to the creditor to proceed simultaneously against the principal debtor as well as the surety or to proceed against the surety alone as the case may be and no relief in such circumstances could be granted to the petitioners. However, in order

to enable the petitioners to avail one time settlement (OTS) facility, they were directed to pay an amount of Rs.10 lakhs within a period of six weeks from the date of the judgment and to file an application before the Kerala Financial Corporation claiming such benefits. According to the petitioners, they remitted an amount of Rs.10 lakhs and expressed their willingness to remit a further amount of Rs.72,73,502/- of which Rs.32,73,502/- was paid and agreed to pay the balance of Rs.40 lakhs and based on the representation made claiming one time settlement benefit, the 3rd respondent requested the appellants to raise the offer and the appellants by their letter dated 22/3/2005 informed the 3rd respondent about their willingness to pay a sum of Rs.75 lakhs as per Ext.P23. But in utter disregard the same and the direction contained in Ext.P21

judgment, the claim was rejected holding that the one time settlement (OTS) policy has not been approved by the Board of Directors by Ext.P24. Challenging the said order they filed W.P.(C).No.15965/2005. At the time of hearing, the Standing Counsel for the Kerala Financial Corporation submitted that the one time settlement benefit not available previously was later extended to short term loans also and accordingly the appellants were granted the benefit under the one time settlement scheme and the amount payable under one time settlement scheme is Rs.72,40,379/- and the actual liability is above Rs.1.55 crores excluding penal interest. The learned Single Judge granted time upto 30/3/2006 for making initial payment of Rs.50 lakhs and for the balance amount time upto 6/3/2006 was also granted. To the above extent, the terms of one time settlement scheme were modified. However,

it was observed that in case of default, they will not be entitled to one time settlement benefit. It is against the said judgment that the present appeal is filed.

2. At the time of admission the fact that the petitioners have already paid Rs.76 lakhs was taken note of and an interim order was passed on 7th April, 2006 enabling the Kerala Financial Corporation to proceed against the mortgaged properties and other properties of the appellants except their residential house for the time being. It is the contention of the appellants that they are only sureties to the loan transaction and they have already paid Rs.76 lakhs and have prepared to pay another amount of Rs.25 lakhs on condition that for the balance amount to be recovered, proceedings be initiated against other sureties and the principal debtor and the hypotheca, before proceeding further against

them. The Standing Counsel appearing on behalf of the Kerala Financial Corporation submitted that the principal debtor is the son-in-law of the appellants and that there is no hypotheca left to proceed against and as per the interim order passed by this Court, the creditor proceeded against the properties of the appellants, but there was no successful bidders and it has to be re-notified. The contention of the appellants that they are only sureties and that the proceedings be initiated against the other sureties and the principal debtor and they having paid substantial amount, cannot at this stage be entertained, especially when the appellants' contention has been rejected as per the earlier judgment (Ext.P21) in O.P.No.3033/2003. Whether the appellants were defraud by the 4th respondent principal debtor is not a matter on which this Court could give

any finding, as the 4th respondent is none other than the son-in-law of the appellants and further admittedly the appellants stood as sureties for the loan transaction between the 4th respondent and the creditor, namely, the Kerala Financial Corporation. As such the Kerala Financial Corporation is entitled to proceed against the sureties or the principal debtor as the case may be for realisation of the balance amount due. As far as the appellants are concerned, the relief against the 4th respondent principal debtor could only be by way of separate proceedings, if so advised. Even though the appellants had paid substantial amount towards the loan, admittedly, the balance amount due and payable as per the one time settlement scheme extended to the appellants, still remains unpaid. In such circumstances, when the appellants did not repay the amount even after availing the

one time settlement scheme, the creditor is entitled to recover the amount due by way of proceedings against the appellants as well as the other sureties or the principal debtor, as the case may be. When the creditor has chosen to proceeded against the appellants, who are the sureties for the loan transaction, we cannot find fault with the creditor in proceeding against the appellants for realisation of the amount due.

In the result, we find no merit in the writ appeal and it is accordingly dismissed.

V.K.BALI,
CHIEF JUSTICE.

P.R.RAMAN,
JUDGE.

kcv.